

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

HALL AND BARTLEY

Licensee of Business, Trunked (YU) Station  
WQGD364, Middletown, California

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**ORDER PROPOSING MODIFICATION**

**Adopted: June 25, 2007**

**Released: June 27, 2007**

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* By this *Order Proposing Modification*, we initiate a proceeding to modify the license of Hall and Bartley (H&B) for Station WQGD364, Middletown, California, by deleting frequency 939.2375 MHz from Location 1, deleting Locations 2 and 3, and deleting frequency 900.2375 MHz from Locations 4 and 5. As discussed in further detail below, we take this action pursuant to an informal request submitted on January 3, 2007 by the Enterprise Wireless Alliance (EWA).<sup>1</sup>

2. *Background.* H&B was granted a license for 900 MHz Business Radio Service Station WPPE708, Middletown, California, in November 1999, for a five-year license term. The license expired by its own terms in November 2004. On March 21, 2005, H&B filed an application for a new authorization for the same locations and frequencies as were authorized to Station WPPE708, and requested a waiver of the Commission's freeze<sup>2</sup> on new 900 MHz applications.<sup>3</sup> The application was coordinated by the Personal Communications Industry Association (PCIA).<sup>4</sup> Because the waiver request indicated that the application was intended to relicense facilities formerly authorized under Call Sign WPPE870—the technical parameters of which did not match the application—Commission staff returned the application on May 18, 2005 for clarification of why H&B purported to seek reinstatement of an old license.<sup>5</sup> On May 27, 2005, PCIA responded that the waiver request intended to reference Call Sign WPPE708, and stated, "It is our understanding that reinstatement and late renewal are one in the same thing. Either action is acceptable to us."<sup>6</sup>

3. On December 11, 2006, the Wireless Telecommunications Bureau, Mobility Division

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<sup>1</sup> See Letter dated Jan. 3, 2007 from Andre Cote, Senior Vice President, Enterprise Wireless Alliance, to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission (EWA Letter).

<sup>2</sup> See Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, *Public Notice*, 19 FCC 18277 (WTB 2004); see also Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pools, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 05-62, 20 FCC Rcd 3814 (2005).

<sup>3</sup> See FCC File No. 0002094603 (filed Mar. 21, 2005 and amended May 27, 2005).

<sup>4</sup> Frequency coordination number PC20050480006.

<sup>5</sup> Return Letter Ref. No. 3509157 (May 18, 2005).

<sup>6</sup> See Letter dated May 27, 2005 from Andrew Barbour, PCIA Coordination Services, to Federal Communications Commission.

(Division) granted the request for waiver of the 900 MHz freeze.<sup>7</sup> The Division concluded that the underlying purpose of the 900 MHz freeze would not be frustrated because H&B only sought a license for the facilities it operated prior to the institution of the freeze, and that grant of a waiver was in the public interest.<sup>8</sup> The application was granted under Call Sign WQGD364 on December 15, 2006.

4. On January 3, 2007, EWA asked the Division to revise its licensing action by deleting frequency 939.2375 MHz from Location 1, deleting Locations 2 and 3, and deleting frequency 900.2375 MHz from Locations 4 and 5.<sup>9</sup> EWA contended that such action was appropriate because the referenced locations and frequencies did not comply with Section 90.621 of the Commission's Rules.<sup>10</sup> On January 25, 2007, H&B responded that no such action was appropriate because the Division already had determined that grant of the application was in the public interest, and the licensing landscape had not changed since the license for Call Sign WPPE708 terminated.<sup>11</sup>

5. *Discussion.* Section 90.621(b) of the Commission's Rules states that co-channel stations in the 900 MHz band must be separated by at least seventy miles unless the prior licensee concurs or the applicant provides an analysis demonstrating that the proposed station meets certain transmitter power and antenna criteria for short spacing.<sup>12</sup> Our engineering analysis confirms that H&B's application did not satisfy these technical criteria. EWA states that its research "found no documentation that the above referenced licensee obtained necessary letters of consent from incumbent licensees, nor did EWA locate a waiver of the 900 MHz short spacing table."<sup>13</sup>

6. Contrary to PCIA's understanding, there is a difference between an application for a new license to replace an expired license, and an application to renew an expired license out of time.<sup>14</sup> A renewal application does not require frequency coordination, while an application for a new frequency assignment generally does.<sup>15</sup> Moreover, an application to renew an expired license out of time must request a waiver of Section 1.949<sup>16</sup> of the Commission's Rules.<sup>17</sup> H&B filed an application for a new station, rather than a renewal application. The application set forth evidence of frequency coordination, and did not request a waiver of Section 1.949 to permit late renewal. Thus, it is evident that the application was for a new license to replace the expired license, rather than to renew the expired license out of time. It appears, however, that PCIA did not in fact confirm that the facilities formerly authorized under Call Sign WPPE708 could be licensed anew consistent with the requirements of Section 90.621.

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<sup>7</sup> Hall and Bartley, *Order*, 21 FCC Rcd 14348 (WTB MD 2006).

<sup>8</sup> *Id.* at 14349 ¶ 6.

<sup>9</sup> See EWA Letter at 2.

<sup>10</sup> *Id.* at 1 (citing 47 C.F.R. § 90.621).

<sup>11</sup> See Letter dated Jan. 25, 2007 from Alan S. Tilles, counsel for H&B, to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, at 2-3. H&B also asserted that EWA should have sought additional information from H&B or PCIA prior to requesting Commission action. *Id.* at 3.

<sup>12</sup> See C.F.R. § 90.621(b).

<sup>13</sup> EWA Letter at 1.

<sup>14</sup> See Disneyland Resort, *Order*, 21 FCC 536, 537 ¶ 1 (WTB PSCID 2006) (granting waiver of the 900 MHz freeze to permit application for new license, but denying waiver of Section 1.949 to permit renewal of expired license).

<sup>15</sup> See C.F.R. § 90.175.

<sup>16</sup> See C.F.R. § 1.949.

<sup>17</sup> See Wireless Telecommunications Bureau Clarifies Private Land Mobile Radio License Renewal Only Process, *Public Notice*, 18 FCC Rcd 11849, 11850 (WTB PSPWD 2003).

7. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter. Section 316(a)(1) permits the Commission to modify a station license if the action will promote public interest, convenience, and necessity. Based on the circumstances presented, we believe that H&B's operation on the disputed frequencies is contrary to the public interest, because it does not afford co-channel licensees the protection to which they are entitled, absent their consent. Thus, based on the record before us, we conclude that it is in the public interest to modify H&B's license for Station WQGD364 by deleting frequency 939.2375 MHz from Location 1; deleting Locations 2 and 3; and deleting frequency 900.2375 MHz from Locations 4 and 5. We believe that the proposed modification will not unduly disrupt H&B's operations, because the predicted service contours of the locations to be deleted largely overlap the predicted service contour of Location 1 within the area in which H&B's mobile units are authorized to operate.

8. In accordance with Section 1.87(a) of the Commission's Rules,<sup>18</sup> we will not issue a modification order until H&B has received notice of our proposed action and has had an opportunity to file a protest. To protest the modification, H&B must, within thirty days of the release date of this *Order Proposing Modification*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be mailed to the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Washington, DC 20554, Attn: Mel Spann.<sup>19</sup> If no protest is filed, H&B will have waived its right to protest the modification and will be deemed to have consented to the modification.

9. *Conclusion and Ordering Clauses.* For the reasons stated above, we propose to modify H&B's license for Station WQGD364 by deleting frequency 939.2375 MHz from Location 1; deleting Locations 2 and 3; and deleting frequency 900.2375 MHz from Locations 4 and 5.

10. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of Commission's Rules, 47 C.F.R. § 1.41, the informal request submitted by the Enterprise Wireless Alliance on January 3, 2007 IS GRANTED to the extent indicated above.

11. IT IS PROPOSED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of Commission's Rules, 47 C.F.R. § 1.87, that the license of Hall and Bartley for Business, Trunked Station WQGD364 BE MODIFIED by deleting frequency 939.2375 MHz from Location 1; deleting Locations 2 and 3; and deleting frequency 900.2375 MHz from Locations 4 and 5.

12. IT IS FURTHER ORDERED that this *Order Proposing Modification* SHALL BE SENT by certified mail, return receipt requested, to Hall and Bartley, Attn: Scott Bartley, 4701 Old Redwood Highway, Santa Rosa, California 95401 and to Shulman Rogers Gandal Pordy & Ecker, P.A., 11921 Rockville Pike, 3<sup>rd</sup> Floor, Rockville, Maryland 20852-2743.

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<sup>18</sup> 47 C.F.R. § 1.87(a).

<sup>19</sup> The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only at our new location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service, Express Mail, and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

13. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATION COMMISSION



Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau